

ORIGINAL

BEFORE THE
Federal Communications Commission

WASHINGTON, D. C. 20554

In re)
)
Amendment of Section 73.202(b)) MM Docket 95-74
FM Broadcast Stations) RM No. 8579
(Benavides and Bruni, Texas))
(Rio Grande City, Benavides)
and Bruni, Texas) RM No. _____

DOCKET FILE COPY ORIGINAL

To: The Commission

COMMENTS AND COUNTERPROPOSALS

Sound Investments Unlimited, Inc., ("Sound Investments"),¹ by its attorneys, hereby submits Comments to the Notice of Proposed Rule Making ("the NPRM") in the above-captioned proceeding and also submits two counterproposals. The NPRM was issued in response to a petition for rule making filed by Benavides Communications ("Petitioner"). Petitioner's primary request is the reallotment of Channel 299C2 from Benavides to Bruni, Texas, as the locality's first local transmission service.² Sound Investments opposes Petitioner's proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, and offers two alternative counterproposals that would better serve the public interest.

Bruni lacks the indicia required by the Commission to support a finding that it is a "community" for allotment purposes. See e.g., Vimville, Mississippi, 48 FR 5974 (1983), Hannibal, Ohio, 6 FCC Rcd 2144 (1991), Columbia, California, 6 FCC Rcd 3292 (1991). As noted by the Commission in the NPRM, Bruni is not incorporated, nor is it listed in the US Census. Furthermore, Bruni has no local government or local law enforcement system. Law enforcement is provided through the Webb County Sheriff's office. The Webb County Consolidated School System operates the schools for Bruni residents. Bruni has no local newspaper or telephone directory. All road maintenance

1 Sound Investments is the licensee of FM Station KCTM, Channel 276A, Rio Grande City, Texas.

2 Petitioner also requests the modification of Station KXTM(FM)'s construction permit to specify Bruni as its community of license. In addition, Petitioner proposes the allotment of Channel 254A to Benavides, Texas, and states it will apply for both Channels. Notice of Proposed Rule Making, MM Docket 95-74, released June 1, 1995.

No. of Copies rec'd 072
List A B C D E

services are provided through the county. Water is furnished by Los Ojuelos in Miranda City. It has a population of less than 500. In fact, Bruni has fewer indicia than, for example, Columbia, California, which the Commission found was not a "community" for allotment purposes.³ The nearest airport is in Laredo. It has no Chamber of Commerce. There is no public interest or economic justification for reassigning 299C2 to Bruni. We believe Petitioner may be using its proposal as means to serve Laredo, rather than Bruni, Texas. If it wished to serve Bruni, we note that its current construction permit already allows it to do so. (See KXTM Service Area Map, Exhibit 1). Furthermore, if, arguendo, petitioner wished to place "city grade" service over Bruni, there is a range of potential transmitter sites between Benavides and Bruni which would provide such service to both communities without requiring any change in Section 73.202, as well as negotiation with Mexico and other challenges.

On the other hand, if Petitioner were successful in its request for Bruni, which is 64 km. from Laredo, to be substituted as city of license, a transmitter site could at one time have been chosen halfway between the two communities, and some level of service provided on channel 299 in Laredo. However, in a similar case, that of KBDR, which is licensed to Mirando City, Texas, which is approximately halfway between Bruni and Laredo, the licensee found it necessary to install a booster directly in Laredo (where it has its studio) in order to provide adequate service.

In the interim, however, Mexico has recently secured an allotment for Nuevo Laredo, located directly across the border from Laredo, for channel 297B. As a result, a transmitter for a Channel 299C2 licensed to Bruni can no longer be located west of Bruni, towards Laredo, at all. (See Exhibit 2, Allocations Map) In addition, it would be impossible to install a booster there to improve service, since it would cause an even more serious conflict with the new Mexican allocation.

We agree with the concern raised by the Commission that substitution of channel 254A for 299C2 at Benavides, TX, will not provide the same level of service to the surrounding area. Furthermore, it is likely that the petitioner will not be the only applicant for this proposed channel, and that the provision of service, reduced though it may be, would be delayed for years. Rather, we suggest that it is in the public interest that KXTM be constructed as presently permitted in Benavides, TX.

As a counterproposal to Petitioner's proposal, Sound Investments requests the modification of KCTM's license to channel 298C2 in Rio

³ Columbia, California, had a community college, Chamber of Commerce, and an airport serving local and regional needs. Columbia, California.

Grande City as a specially negotiated short spaced allotment with respect to both the Ciudad Guerrero 297A and the new Nuevo Laredo 297B allotments.⁴ This counterproposal will satisfy international treaty obligations with Mexico, as it no longer requires substitution of a Mexican channel, and will permit greatly increased service to the public to the southeast of Rio Grande City, where it is greatly needed. It is, however, short spaced to the Bruni proposal. If 299C2 is allocated as requested to Bruni, the area within which 298C2 may be proposed is pushed entirely across the Mexican border. We offer two counterproposals in the alternative which would bring together these changes. The primary difference between the two is that the second provides an allotment to Bruni, whereas the first does not.

Amend Section 73.202 (b) as follows:

		Channel Number	
	City	Present	Proposed
A.	Rio Grande City	276A	298C2 ⁵
	Benavides	299C2	299C2, 254A
B.	Rio Grande City	276A	298C2 ⁶
	Benavides	299C2	254A
	Bruni	-	299C3

The undersigned will apply for the new Rio Grande City allotment if allocated by the Commission. It has no interest in applying for the Bruni or Benavides allotments.

4 On November 15, 1994, Sound Investments petitioned the Commission to allocate channel 298C2 to Rio Grande City, Texas, the current city of license for FM Station KCTM. The request was denied because we concurrently asked for substitution of the Mexican Allotment for channel 297A in Ciudad Guerrero, Tamaulipas, Mexico, which the Commission could not process.

5 Specially Negotiated Short Spaced Allotment limited to 8 kW @ 150 Meters HAAT or equivalent at the bearing of 330 degrees toward Nuevo Laredo, and 6 kW @ 100 Meters HAAT or equivalent at the bearing of 307 degrees toward Ciudad Guerrero (to which the proposed allotment is fully spaced as a 6 kW class A). This allotment meets all the provisions of the Revised US/Mexican FM Broadcasting Agreement, released September 27, 1994. Coordinates for this allotment are in Rio Grande City: North 26° 23', West 98° 49'. A table of allocation for this allotment is given in Exhibit 3. Detailed maps showing compliance with the Mexican Agreement will be submitted if requested.

6 Same as in Footnote 5.

We are prepared to provide further support for our claims if necessary with population studies and examination of the public interest to respond to any comments made by Petitioner. Due to the complex nature of this issue, we also ask for a 15-day extension for the period within which Reply Comments may be submitted, to August 23, 1995.

Respectfully submitted,

SOUND INVESTMENTS UNLIMITED, INC.

By:



Mark A. Brinton

Barry D. Wood

JONES, WALDO, HOLBROOK &
MCDONOUGH, P.C.

Suite 900

Washington, D.C. 20037

(202) 296-5950

Its Attorneys

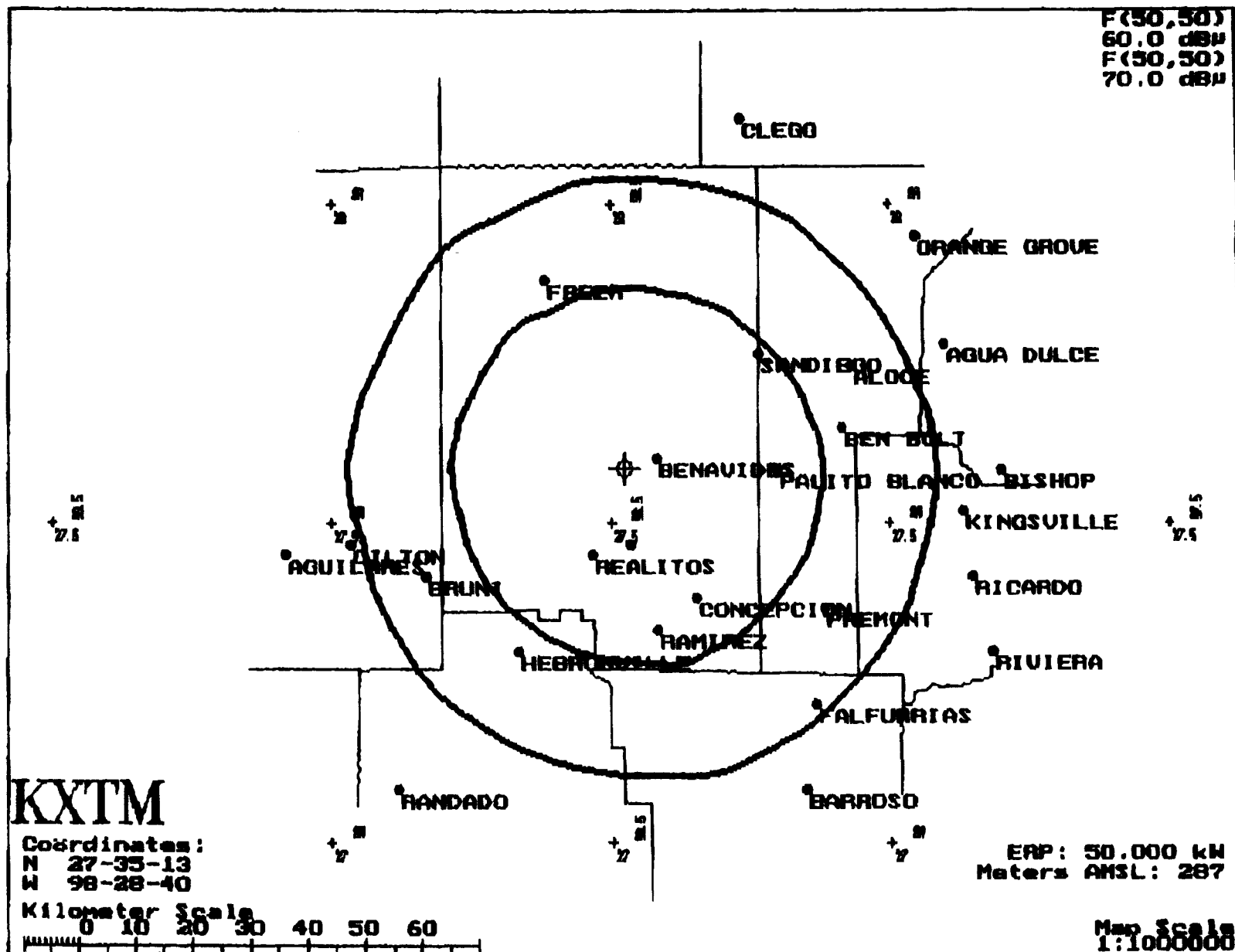
July 24, 1995

CERTIFICATE OF SERVICE

I, Anita Speros, hereby certify that I have, this 24th day of July, 1995, caused to be sent by U.S. first-class mail, postage-prepaid, a true and correct copy of the foregoing "Comments and Counterproposal" to the following:

Lee J. Peltzman, Esq.
Suite 200
2000 L Street, N.W.
Washington, D.C. 20036

Anita C. Speros



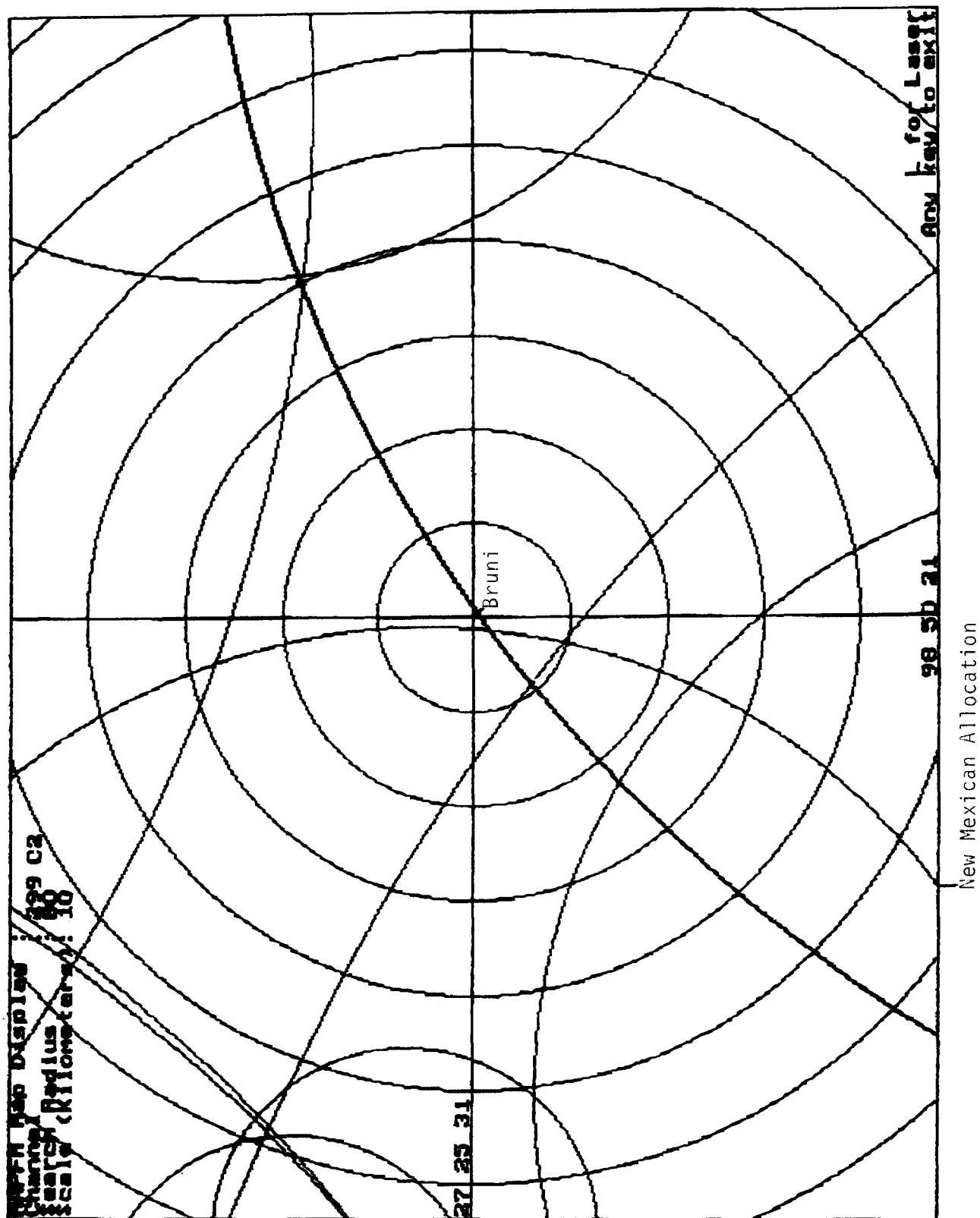


Exhibit 3 Allocation study for 298C2, Rio Grande, TX

MAPFM search of channel 298C2 (107.5 MHz), at N. 26° 23', W. 98° 49'.

CALL	CITY	ST	CHN	CL	S	DIST	SEPN	BRNG	CLEAR
ALC	Mcallen	TX	245	C	U	104.2	35.0	108.7°	69.2
KVMV	Mcallen	TX	245	C	L	104.2	35.0	108.7°	69.2
XHVTHF	Matamoros	TA	296	B		143.1	65.0	112.9°	78.1
ALC	Matamoros	TA	296	B		141.1	65.0	113.1°	76.1
ALC	Ciudad Guerrero	TA	297	A		68.1	105.0	310.4°	-36.9
ALC	Nuevo Laredo	TA	297	B		138.9	164.0	330.6°	-25.1
KXTNFM	San Antonio	TX	298	C	L	325.0	249.0	9.6°	76.0
ALC	San Antonio	TX	298	C	U	325.0	249.0	9.6°	76.0
KXTM	Bruni	TX	299	C2	A	115.5	130.0	358.9°	-14.5
KXTM	Benavides	TX	299	C2	C	137.5	130.0	14.2°	7.5
KXTM	Benavides	TX	299	C2	D	137.5	130.0	14.2°	7.5
ALC	Benavides	TX	299	C2	U	137.7	130.0	14.2°	7.7
XHMNFM	Monterrey	NL	299	B		171.6	164.0	242.2°	7.6
ALC	Monterrey	NL	299	B		171.6	164.0	242.2°	7.6
KVLY	Edinburg	TX	300	C1	L	90.4	79.0	99.2°	11.4
ALC	Edinburg	TX	300	C1	U	90.5	79.0	99.4°	11.5